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7 **UNITED STATES DISTRICT COURT**
8 **NORTHERN DISTRICT OF CALIFORNIA**
9 **SAN FRANCISCO DIVISION**

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11 ANTHONY MALOCO,
12 Plaintiff,
13 v.
14 PROMETRIC, INC., et al.,
15 Defendants.

Case No. 13-cv-00238 NC

**INTERIM PRETRIAL
CONFERENCE ORDER**

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17 Upon review of the Joint Pretrial Conference Statement filed by the parties, the Court
18 issues this interim order to facilitate the administration of a just, speedy, and inexpensive
19 determination of this case. This order supplements the Trial Preparation Standing Order for
20 the undersigned trial judge in this case.

21 **Settlement Referral**

22 The parties expressed joint interest in returning to Judge Saldamondo for further
23 mediation. No court order is required. If the parties wish to engage Judge Saldamondo,
24 they should do so promptly. The Court is not inclined to refer this case for an emergency
25 settlement conference before a magistrate judge on the eve of trial.

26 **Motions in Limine**

27 The parties identified the following topics for motions in limine:
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PLAINTIFF

1. To exclude defendants' offer of reinstatement. (PTS at 3, 5)
2. To bar defendants from arguing that wages earned from Maloco's subsequent inferior employment may be used to discount economic damages. (PTS at 3)
3. To exclude witness Mercedes Reyes, as irrelevant, prejudicial, and not available for deposition by Maloco. (PTS at 18-19)
4. To exclude witness Lawrence Ames, due to failure to disclose. (PTS at 19)
5. To exclude witness Brian Dawson, due to failure to disclose. (PTS at 19)
6. To exclude witness Michael DePaul, due to failure to disclose, privileges, and harassment of trial counsel. (PTS at 20)

DEFENDANTS

1. To bar Maloco from recovering economic damages because he rejected reinstatement offers. (PTS at 5-6)
2. To bar Maloco's general damage claim due to failure to disclose under Fed R. Civ. P. 26. (PTS at 6)
3. To exclude witness Joe Forrester, due to failure to timely and properly disclose expert witness. (PTS at 17)
4. To exclude witness Anthony Schicchitano, due to failure to disclose and harassment of former general counsel of Prometric. (PTS at 17)
5. To exclude testimony of Prometric witness on Prometric's financial condition, due to failure to disclose under Rule 26. (PTS at 18)

JOINT ISSUE

Request for clarification on trial procedures considered:

1. Allowing limited pre-closing deliberations (as per, e.g., Rule 39(f) of the Arizona Rules of Civil Procedure); and
2. Allowing each side fifteen minutes of opening/argument time to be used during the evidence time.

Briefing Schedule

The Court sets the following briefing schedule for trial motions in limine: Motions due February 7, 5:00 p.m. Opposition briefs due February 10, 5:00 p.m. No reply briefs without leave of court. The total briefing (motion and opposition) for each side on the motions in limine is limited to 25 pages. Motions in limine will be considered at the pretrial conference.

Trial Exhibits


Each side must submit three sets of trial exhibits to chambers by noon on February 10. The exhibits must be tabbed, clearly marked, and ready for trial.

Time Limits

In the Court's assessment, plaintiff's request for 5-7 trial days for his presentation is much more than is necessary. The Court will set hard trial time limits at the pretrial conference and encourages the parties to revisit their trial needs.

IT IS SO ORDERED.

Date: February 4, 2014


Nathanael M. Cousins
United States Magistrate Judge